But there is a great difference between publishing a person's photograph for the satisfaction of social curiosity, and publishing it as an advertisement. In the former case privacy conflicts with a social claim, a right akin to freedom of thought and speech; in the latter, privacy is made to yield to the claim of another individual to make commercial profit. This difference is the foundation of the prevailing public belief that in the *Roberson* case there was a right invaded, whether the courts recognize such a right or not.

There being an injury, is there any remedy, or is the law at fault? The Court of Appeals has taken the latter view, suggesting remedial legislation. The reasons for refusing a remedy are, that otherwise a flood of litigation would ensue, and that a court of equity has no jurisdiction except where property is concerned. The first objection would be considerable, if a decision for the plaintiff would have established an indefinite right of privacy, a general right to be let alone. But that result would not necessarily follow, because the present case rests on narrower principles, as already shown. In regard to the second point, if a property basis really is necessary for equity jurisdiction, it is no great stretch of legal ideas to say that everyone has a property right in his own form, as was urged by RUMSEY, J., in the lower court. Its value as property is proved by the use made of it in the case in hand. When the description of property kept in private is an invasion of the owner's property rights, *Prince Albert* v. *Strange* (1849) 2 De G. & Sm. 652, 1 McN. & G. 25, the reproduction of a person's features for advertisement would seem no less so. But it may even be questioned whether a property basis is necessary. In reading *Gee* v. *Pritchard* (1818) 2 Swanst. 402, and *Prince Albert* v. *Strange, supra,* one cannot but feel that the real object of the courts in granting, as well as of the plaintiff in asking, the injunctions was to protect privacy, and the use of property rights as a ground of jurisdiction was merely a fiction. "Privacy is the right invaded," said Lord Chancellor COTTENHAM (1 McN. & G. 47), and the right of preventing publication altogether was considered at least as important as the right to the profits of publication. It would not be a greater step than has been taken at other times, to cast off the fiction of protecting property and in terms protect the more personal right.

The conservatism of the decision expresses the court's belief that society has reached a state where law must progress by legislation; but the general adverse criticism it has received indicates an opposing belief in Sir Henry Maine's generalization, that between the periods of fiction and legislation there is another agency in the growth of the law, namely, equity.

MUNICIPAL REGULATION OF STREET RAILWAY RATES.—Some light is thrown by the United States Supreme Court, in its decision in the case of the *City of Detroit* v. *The Detroit Citizens' Street Railway Co.* (1902), 22 Sup. Ct. 410, on what constitutes a contract as to rates between a municipal corporation and a street railway company, the power of the city to affect that contract by ordinances ordering reductions in rates and provision of free transfers, and the remedies which may be pursued by the company in the defense of its rights. While based strictly on a particular state of facts, the decision may,

nevertheless, be of some assistance in determining the validity of similar and not infrequent efforts by municipal corporations to lower street railway fares.

In the case in question, the company asked for an injunction forbidding the enforcement of such ordinances. The request for equitable relief was based on the embarrassing consequences which would attend an effort in good faith by the company to act on its belief that the ordinances were invalid. Continuous demands by persons who wished to travel at reduced rates would doubtless be followed by their continuous expulsion. Numerous breaches of the peace would result. Suits to enforce the alleged rights of the public would be numerous. Innumerable penalties provided by the ordinances would be incurred. The financial standing of the company would be impaired and a new loan fail—to the company's irreparable loss. The decision of the Supreme Court to grant equitable relief in this case is hardly a fair subject for criticism, since it rests largely on the fact that no objection has been made by the defendants at any stage of the proceedings to this form of relief, provided the plaintiff be entitled to any; and the force of the precedent is expressly limited to exactly similar cases.

The power of the Legislature of Michigan to authorize the municipal corporation to contract as to rates of fare in such a way as to bind future common councils during a specified period seems clear. *Walla Walla* v. *Walla Walla Water Co.* (1898), 172 U. S. 1, 9; *Freeport Water Co.* v. *Freeport*, (1901), 180 U. S. 587. The power of the legislature itself to regulate fares is not in dispute. *Munn* v. *Ill.* (1876), 94 U. S. 155; *Buffalo, etc., Co.* v. *Buffalo, etc., R. Co.*, (1888), 111 N. Y. 132. To exempt a carrier from this control, the terms of the exemption must be unmistakable, *C., B. & Q. R. Co.* v. *Iowa* (1876) 94 U. S. 132; and a municipal corporation has no power to make a contract with a street railway which will prevent the legislature from regulating rates of fare. *Indianapolis* v. *Navin* (1898), 151 Ind. 139. The question is, therefore, reduced to this: Where the company has built under a statute authorizing construction "under such regulations and upon such terms and conditions as the [municipal] authorities may from time to time prescribe," provided the permission of the municipality has been obtained and an agreement made as to rates, is such an agreement a contract which subsequent municipal ordinances cannot impair? This question the court answers in the affirmative. A fair construction of the language of the statute seems to support the decision. The above quotation from the statute appears to refer to those necessary regulations of street railway traffic in connection with the health and comfort of passengers, the necessity for which cannot be foreseen. It is hardly likely that the legislature intended to place within the power of every municipal council the complete control of the earnings of the company and the basis of its existence.

DUTY OF CARRIER TO PROTECT PASSENGER FROM ILL-TREATMENT BY ITS SERVANTS.—The recent case of *McLeod* v. *N. Y., C., & St. L. Ry. Co.* (1902) 72 App. Div. 116, serves to show, if it cannot correct, an error into which the Court of Appeals of New York seems to have